Kerajaan Malaysia & Anor v Yong Moi Sin

HIGH COURT (JOHOR BAHRU) — CIVIL APPEAL NO (MT1) 12–99 OF 2005
VERNON ONG JC
3 AUGUST 2009

Tort — Damages — False imprisonment — Loss of reputation — Appeal against award of damages — Whether award fair and reasonable

The plaintiff sued for damages for false imprisonment and loss of reputation after being wrongly arrested and remanded on suspicion of possessing stolen items. The claim was dismissed by the sessions court and his subsequent appeal to the High Court was also dismissed. Dissatisfied with the decision of the High Court the plaintiff applied for leave to appeal to the Court of Appeal. Leave was granted by the Court of Appeal and his appeal was allowed. The case was subsequently remitted to the sessions court. The learned sessions court judge ('SCJ') awarded the plaintiff damages of RM10,500 for false imprisonment, RM150,000 for loss of reputation and interest. Hence this appeal by the defendants against the decision.

Held, allowing the appeal in part:

(1) In this appeal there was nothing to show that the SCJ's award for false imprisonment was so extremely high as to make it an entirely erroneous estimate or that the SCJ had acted on wrong principle of law or took into consideration irrelevant matters or failed to take into account relevant matters. On the whole the court found that the award for false imprisonment was fair and reasonable (see para 4).

(2) The final order of the Court of Appeal had directed the SCJ to assess damages for false imprisonment which included loss of reputation. However, in the process of assessing the damages for loss of reputation the SCJ had apparently acted on some wrong principle of law. Damages for false imprisonment include damages for injury to liberty and injury to feelings which is another form of loss of reputation. Even where there had been no physical injury, substantial damages may be awarded for indignity, discomfort or inconvenience. Where liberty had been interfered with damages is given to vindicate the plaintiff's rights even though no pecuniary damages had been suffered. Accordingly the award of RM150,000 was set aside and substituted with an award of RM50,000 (see para 7).

[Bahasa Malaysia summary

Plaintif telah menyaman untuk ganti rugi bagi penahanan salah dan reputasi terjejas setelah ditangkap secara salah dan ditahan kerana disyaki memiliki barang-barang curi. Tuntutan tersebut telah ditolak oleh mahkamah sesyen dan rayuan berikutnya di Mahkamah Tinggi juga telah ditolak. Tidak berpuas hati dengan keputusan Mahkamah Tinggi, plaintif memohon kebenaran untuk merayu di Mahkamah Rayuan dan rayuannya dibenarkan. Kes itu kemudiannya dikembalikan semula kepada mahkamah sesyen. Hakim mahkamah sesyen yang bijaksana ('HMS') mengawardkan plaintif ganti rugi sebanyak RM10,500 untuk penahanan salah, RM150,000 untuk reputasi dan kepentingan terjejas dan faedah. Justeru, rayuan ini oleh defendan-defendan menentang keputusan tersebut.

Diputuskan, membenarkan sebahagian rayuan:

(1) Dalam rayuan ini, tidak terdapat apa-apa yang dapat menunjukkan bahawa award oleh HMS untuk penahanan salah adalah terlalu tinggi sehingga menyebabkan ia suatu anggaran yang salah secara keseluruhannya atau HMS telah bertindak berdasarkan prinsip undang-undang yang salah atau telah memberi pertimbangan terhadap perkara-perkara yang tidak relevan atau telah gagal untuk mengambilkira perkara-perkara yang relevan. Secara keseluruhan, mahkamah mendapati award untuk penahanan salah itu adalah adil dan berpatutan (lihat perenggan 4).

(2) Perintah terakhir Mahkamah Rayuan telah mengarahkan HMS untuk menilai ganti rugi untuk penahanan salah yang termasuk reputasi terjejas. Walau bagaimanapun, dalam proses menilai ganti rugi untuk reputasi terjejas tersebut, HMS telah bertindak berdasarkan prinsip undang-undang yang salah. Ganti rugi untuk penahanan salah adalah termasuk ganti rugi kerana menjejaskan kebebasan dan mengguris perasaan yang mana merupakan satu lagi bentuk reputasi terjejas. Walaupun tidak terdapat kecederaan secara fizikal, ganti rugi yang substansial boleh diberikan untuk penghinaan, ketidakselesaan atau kesulitan. Di mana hak kebebasan telah dicampur tangan, ganti rugi diberikan untuk mewajarkan hak-hak plaintif walaupun tiada kerugian kewangan yang dialami. Oleh itu, award sebanyak RM150,000 diketepikan dan digantikan dengan award sebanyak RM50,000 (lihat perenggan 7).]

Notes

For cases on false imprisonment, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 202–203.

Cases referred to

Bandar Nilai Sdn Bhd (formerly known as Jurutera Perunding REC Sdn Bhd) v Muthusamy a/l Etti Arunchala Goudan & Ors [2005] 2 MLJ 626; [2005] 5 CLJ 11, HC (refd)

Chong Fook Kam & Anor v Shaaban & Ors [1968] 2 MLJ 50, FC (refd)

Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143; [1980] 1 LNS 92, FC (refd)

KDE Recreation Bhd v Low Han Ong & Ors [2006] 3 MLJ 335; [2006] 1 CLJ 1097, CA (refd)

Karpal Singh a/l Ram Singh v DP Vijandran [2001] 4 MLJ 161, CA (distd)

Kuan Kwai Choi v Ak Zaidi bin Pg Metali [1993] 2 MLJ 207, HC (refd)

Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors [2001] 2 CLJ 385, CA (distd)

Mahmod bin Kailan v Goh Seng Choon & Anor [1976] 2 MLJ 239, FC (refd)

Pang Fee Yoon v Piong Kien Siong & Ors [1999] 3 MLJ 189, HC (distd)

Panglima Aces Sdn Bhd v Highway Brick Works (Serendah) Sdn Bhd [2006] 3 CLJ 628, HC (refd)

Penang Port Commission v Kanawagi s/o Seperumaniam [2006] 3 MLJ 306; [2006] 2 CLJ 480, CA (refd)

State of Rajasthan v Rikhabchand AIR 1961 Rajasthan 64 (refd)

Sailajanand Pande, Appelant v Suresh Chandra Gupta & Anor AIR 1969 Patna 194 (refd)

Tan Kay Teck & Anor v The Attorney-General [1957] MLJ 237 (refd)

Thompson v Commissioner of Police of the Metropolis [1998] QB 498, CA (refd)

Topaiwah v Salleh [1968] 1 MLJ 284, FC (refd)

Legislation referred to

Civil Law Act 1956 s 11
Courts of Judicature Act 1964 Schedule, item 7
Criminal Procedure Code s 62(2), (3)
Rules of the High Court 1980 O 42 r 12

Gobind Singh Deo (WL Shim and Subash with him) (Gobind Singh Deo & Co) for the respondent.
Mohaji Selamat (Habibah with him) (Senior Federal Counsel, Attorney General's Chambers) for the appellant.

Vernon Ong JC:

This is an appeal by the defendants in court below against the decision of the learned sessions court judge given on 18 April 2005 awarding damages in the sum of RM160,500 together with interest and costs.

A BRIEF ACCOUNT OF THE FACTS

[1] At about 5.30pm on 15 February 1993 the plaintiff a gold merchant was arrested at his factory. He was brought to Balai Polis Tampoi and remanded for the night. On 16 February 1993 the plaintiff who was handcuffed was taken to his factory. He was asked to open a safe which was suspected to contain stolen items. Nothing incriminating, however, was recovered and the plaintiff was released on police bail. Aggrieved the plaintiff sued for damages for false imprisonment and loss of reputation. The plaintiff's claim was dismissed by the learned sessions court judge on 20 May 1995. The plaintiff appealed to the High Court. The plaintiff's appeal was dismissed. Dissatisfied with the decision of the High Court the plaintiff applied for leave to appeal to the Court of Appeal. Leave was granted by the Court of Appeal on 28 April 1999 on, inter alia, the following terms:

> ... ADALAH DIPERINTAHKAN bahawa pemohon diberi kebenaran untuk merayu ke Mahkamah Rayuan terhadap sebahagian keputusan Mahkamah Tinggi Johor Bahru yang diberikan pada 30 haribulan September 1996 oleh Yang Arif Hakim Dato' Hj Abdul Malik bin Hj Ishak yang tidak memutuskan bahawa terdapat ketidakpatuhan dengan peruntukan s 62(2) dan s 62(3) Kanun Acara Jenayah, dengan itu, perayu tersebut adalah berhak ke atas ganti rugi dan relief lain bagi pencerobohan ...

[2] After hearing of the appeal on 4 July 2001 the Court of Appeal allowed the plaintiff's appeal. The pertinent terms are as follows:

> ... MAKA ADALAH DIPERINTAHKAN bahawa rayuan perayu dibenarkan dan perintah YA Hakim, Mahkamah TinggiJohor Bahru bertarikh 30 September 1996 adalah diketepikan DAN ADALAH JUGA DIPERINTAHKAN bahawa kes ini dihantar semula ke mahkamah sesyen Johor Bahru untuk penaksiran ganti rugi yang layak diterima oleh perayu ...

[3] On 18 April 2005 the learned sessions court judge ('SCJ') awarded the plaintiff damages for (1) false imprisonment ('tahanan salah') in the sum of RM10,500 (2) loss of reputation ('fitnah') in the sum of RM150,000 and (3) interest on damages at 8%pa calculated with effect from date of summons to date of satisfaction.

FINDINGS OF THE COURT

[4] At the outset it is noted that the onus on the defendants is a heavy one. In this appeal there is nothing to show that the SCJ's award of RM10,500 for false imprisonment was so extremely high as to make it an entirely erroneous estimate or that the SCJ had acted on wrong principle of law or took into consideration irrelevant matters or failed to take into account relevant matters

(*Topaiwah v Salleh* [1968] 1 MLJ 284; *Mahmod bin Kailan v Goh Seng Choon & Anor* [1976] 2 MLJ 239; *KDE Recreation Bhd v Low Han Ong & Ors* [2006] 3 MLJ 335; [2006] 1 CLJ 1097). On the whole the court finds that the award of RM10,500 for false imprisonment is fair and reasonable (*Chong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 50; *Tan Kay Teck & Anor v The Attorney-General* [1957] MLJ 237; *Kuan Kwai Choi v Ak Zaidi bin Pg Metali* [1993] 2 MLJ 207).

[5] Turning to the award of RM150,000 for 'fitnah'. Learned counsel for the defendants contended that the plaintiff did not obtain leave to appeal for false imprisonment. The SCJ misdirected himself in fact and in law when he proceeded to assess the damages for false imprisonment. In fact the claim for false imprisonment was dismissed by the then trial SCJ. Further the Court of Appeal order dated 28 April 1999 dismissed the plaintiff's application to appeal on false imprisonment and only allowed leave to appeal on the issue of whether the search complied with s 62(2) and s 62(3) of the Criminal Procedure Code. Further, the claim for 'defamation' was abandoned by the plaintiff's then counsel. Accordingly, the SCJ had acted outside of his power or exceeded his jurisdiction and was functus officio (*Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143; [1980] 1 LNS 92; *Penang Port Commission v Kanawagi s/o Seperumaniam* [2006] 3 MLJ 306; [2006] 2 CLJ 480; *Bandar Nilai Sdn Bhd (formerly known as Jurutera Perunding REC Sdn Bhd) v Muthusamy a/l Etti Arunchala Goudan & Ors* [2005] 2 MLJ 626; [2005] 5 CLJ 11; *Panglima Aces Sdn Bhd v Highway Brick Works (Serendah) Sdn Bhd* [2006] 3 CLJ 628).

[6] Learned counsel for the plaintiff submitted that the order for leave clearly states that the plaintiff is entitled to damages for trespass and all other consequential relief arising therefrom. The tort of trespass includes an action for damages for false imprisonment. Trespass and false imprisonment is pleaded in the statement of claim. The order granting leave also states that leave to appeal was granted in respect of trespass and the issue as to whether 'perayu tersebut adalah berhak ke atas ganti rugi dan relief lain bagi pencerobohan'. The final order of the Court of Appeal set aside the High Court order dealing with the three issues which includes false imprisonment and trespass. The matter was remitted to the sessions court for assessment of damages 'yang layak diterima oleh perayu' together with interest and costs. Learned counsel also submitted that this includes loss of reputation, feelings, dignity and the like (*Sailajanand Pande, Appelant v Suresh Chandra Gupta & Anor* AIR 1969 Patna 194; *State of Rajasthan v Rikhabchand* AIR 1961 Rajasthan 64; *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498). Learned counsel further submitted that when assessing damages for 'fitnah' the SCJ had considered matters such as the plaintiff's reputation which are claimable under the tort of false imprisonment. In this context

A 'fitnah' is not defamation per se but for loss of reputation, dignity and other relief lawfully claimable under the heading of false imprisonment for the tort of trespass. The SCJ was bestowed with a discretion by the Court of Appeal which directed him to assess the damages 'yang layak diterima oleh perayu' after ruling that there was trespass. The award of RM150,000 by the SCJ is
B neither excessive nor unreasonable in the circumstances of the case. The amount of the damages is purely in the discretion of the SCJ and such discretion is not to be lightly interfered with in appeal (*Rikhabchand*).

[7] The court agrees with the submission of learned counsel for the plaintiff
C that the final order of the Court of Appeal had directed the SCJ to assess damages for false imprisonment which includes loss of reputation. However, in the process of assessing the damages for loss of reputation the SCJ had apparently acted on some wrong principle of law. In particular the SCJ cited *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161, *Pang Fee Yoon*
D *v Piong Kien Siong & Ors* [1999] 3 MLJ 189 and *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385. *Karpal Singh* is a suit for defamation arising out of a press statement where the High Court awarded RM500,000 in damages. The Court of Appeal reduced the award to RM100,000 on the grounds that the trial judge had misapprehended the
E facts and was also influenced by the trend then prevailing. *Pang Fee Yoon* is also a defamation suit arising from a statutory declaration affirmed by the defendant, a former partner of the plaintiff firm alleging fraud and unethical conduct on the part of the plaintiff. The High Court awarded RM300,000 for defamation. In *Liew Yew Tiam* plaintiff sued on a libel arising from a letter
F containing allegations against their legal firm. The High Court awarded RM500,000, RM300,000, RM50,000 and RM150,000 against the four defendants respectively. On appeal the Court of Appeal held that the learned judge fell into error in making separate awards of damages against each defendant and substituted it with a global award of RM100,000. All
G abovementioned three cases relate to defamation and are plainly distinguishable on its facts and law. The court finds that the award of RM150,000 for loss of reputation is manifestly excessive. The SCJ had acted on wrong principle of law when he relied on the authorities cited by the plaintiff. Damages for false imprisonment includes damages for injury to
H liberty and injury to feelings. Injury to feelings is that indignity, mental suffering, disgrace or humiliation with any attendant loss of social status. It is another form of loss of reputation (*McGregor on Damages*, 16th Ed at paras 1850, 1851; *Rikhabchand*). Even where there has been no physical injury, substantial damages may be awarded for indignity, discomfort or
I inconvenience. Where liberty has been interfered with damages are given to vindicate the plaintiff's rights even though no pecuniary damages has been suffered (*Clerk and Lindsell on Torts*, 17th Ed at pp 12–80). In *Sailajanand* the plaintiff sued on false imprisonment brought about by a magistrate. The court in awarding damages of Rs1,000 made reference to *McGregor on*

Damages. In *Rikhachand* an award of Rs1,600 for loss of reputation was made. Accordingly the award of RM150,000 is set aside and substituted with an award of RM50,000.

[8] On the issue of interest, learned counsel for the defendant submitted that the interest awarded is too high; in *Karpal Singh* interest at only 4% was allowed. Interest is a matter of the court's discretion (Schedule, item 7of the Courts of Judicature Act 1964; s 11 of the Civil Law Act 1956; O 42 r 12 of the Rules of the High Court 1980). On the total award of damages allowed in the sum of RM60,500 the court grants interest at 8%pa calculated from the date of judgment (18 April 2005) until satisfaction.

Appeal allowed in part.

Reported by M Sivabarathi